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***Of Counsel
Putbrese, Hunsaker & Trent***

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***Re: RM-10335
Petition for Rule Making to Amend the
Commission's Rules to Extend its Network
and Non-network Territorial Exclusivity,
Syndicated Exclusivity and Network Non-
duplication Protection Rules to Low Power
TV, Class A and Noncommercial TV
Broadcast Stations.***

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Dear Ms. Salas:

On behalf of Henry J. McGinnis, ("McGinnis") this is to provide Comments in support of the above-referenced Petition for Rule Making filed by Venture Technologies Group, LLC ("VTG") to amend Part 76 of the Commission's Rules to allow all television broadcast stations, including low power, and Class A stations, to bargain for and exercise program exclusivity against other broadcast stations and cable systems.

McGinnis is the licensee of two low power television stations, KATA-LP, Mesquite, Texas, and KJJM-LP, Dallas, Texas. KATA-LP qualifies as a Class A Television station, and KJJM-LP has claimed that status, though its claim is disputed and remains pending. The Rule Making proposed by VTG would benefit McGinnis' stations in the same way as VTG's station in Syracuse, NY.

VTG requested that the Commission amend Sections 76.92 - 97, and 76.151-161 of the Rules; McGinnis wishes to note that similar amendment would be required of Section 73.658(m) of the Commission's Rules, for consistency.

McGinnis agrees with the basic substance of the argument propounded by VTG for amendment of the rules to allow low power television stations and Class A stations to exercise the same exclusivity rights in their communities of license that are enjoyed by full-power

television stations. VTG's arguments are especially apt in the wake of creation of Class A television service pursuant to the mandate of the Community Broadcaster's Act. Class A television stations are expected to serve their communities of license in the same way as full-power stations, and were created to promote localism. Yet such stations, as noted by VTG, are often passed over for purposes of cable carriage in favor of importation of distant signals that would otherwise violate exclusivity rights were the affected station a full-power television station. This would not occur if low power television stations could exercise exclusivity rights against such imported signals.

As noted by VTG, amendment of the rules would serve the purposes behind the network non-duplication rules to protect local advertising and public service announcements provided by local stations within and adjacent to network programming. The rules also protect local stations and promote their viability in the competitive video industry. Such localism is not served by importation of distant signals.

Class A and low power television stations originating programming often provide family programming not provided by the major networks or full power television program, to meet the demands of local audiences for family-oriented, wholesome programming. Additionally, and unlike full power television stations, Class A television stations are *required to provide local programming* to their respective communities of license.¹ Thus, there is a special emphasis on local programming for Class A stations. Furthermore, the Community Broadcaster's Protection Act of 1999 stated that the FCC shall provide each Class A licensee "primary status" as a television broadcaster provided that the station continued to meet the requirements for qualifying low power television stations. Yet, Class A and LPTV stations cannot exercise the same rights as full power stations to ensure their right to primary status, with respect to exclusive carriage of their programming within their market areas.

It should also be noted that, despite their right to primary status as television broadcast stations, Class A stations cannot demand cable carriage except under the same severe restrictive circumstances as ordinary LPTV stations, and that their local programming often cannot be made available over cable systems to the stations' audience in their community of license. However, it is unfair that even where low power or Class A stations are willing to *pay* for carriage, that they cannot exercise exclusivity rights to ensure local exclusivity of programming against importation of distant signals.

Class A stations are no longer regarded as secondary signals. Congress and the Commission

¹Community Broadcaster's Protection Act of 1999, (cite) section (1)(A) requires that low power television stations broadcast a minimum of 18 hours per day, and a minimum of 3 hours per week of programming produced within the market area served by the station.

have recognized the importance of the local service provided by Class A stations, and has imposed new and significant responsibilities and duties on qualifying LPTV stations to ensure continuing service. Logic and fairness dictate that the Commission ensure that Class A and LPTV stations remain able to carry out their duties as imposed by the Commission. It is difficult to provide quality local service where economic viability is a constant issue.

Class A stations enjoy few privileges other than protection of their signals from significant encroachment by full power stations. There is little *quid pro quo* for the increased responsibilities imposed by the Commission on these stations in return for their “primary” status. Class A stations must operate under the restrictions inherent in serving a smaller coverage area; this affects their economic viability, regardless of whether their signals receive greater protection than ordinary LPTV stations. Even with enhanced protection, Class A’s yet have little or no opportunities to improve programming by becoming network affiliates, and program providers have little reason to seek out Class A stations, since they provide limited coverage and are excluded from mandatory cable carriage. There is little in Class A coverage to attract quality, exclusive programming. Class A’s are stuck with minor network affiliations, or must secure individual programs as an independent provider. Even where, as set forth by VTG, Class A stations are able to obtain network affiliations, there is no way to protect that programming from duplication by cable systems or other full-power stations.

All of the foregoing disadvantages inhibit Class A licensees’ ability to effectively serve the public. Economic viability would be improved by conferral of exclusivity rights on Class A and low power stations, where non-duplicative programming is offered. The goals of diversity of programming for the public and the interests of localism would be enhanced by provision of exclusivity rights for low power stations.

Accordingly, McGinnis respectfully requests that the Commission initiate a Rule Making in response to VTG’s Petition to amend the Commission’s Network and Non-network Territorial Exclusivity, Syndicated Exclusivity and Network Non-duplication Protection Rules in order to afford low power television and Class A stations exclusivity protection.

Respectfully submitted,

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